

(d) *Hearing.* (1) If the DSU requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the Department's administration of the programs authorized by title VII of the Act, to conduct a hearing.

(2) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(e) *Judicial review.* A State may appeal the Secretary's decision to disapprove its State plan by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c) and 796d-1(a))

§364.13 Under what circumstances may funds be withheld, reduced, limited, or terminated?

(a) *When withheld, reduced, limited, or terminated.* Payments to a State under chapter 1 of title VII of the Act may be withheld, reduced, limited, or terminated as provided by section 107(c) of the Act if the Secretary finds that—

(1) The State plan has been so changed that it no longer conforms with the requirements of section 704 of the Act; or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of the plan.

(b) *Informal resolution.* If the Secretary intends to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act as provided by section 107(c) of the Act, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice of formal hearing.* If, after reasonable effort has been made to resolve the dispute informally, no resolution has been reached, the Secretary provides written notice to the DSU and SILC of the intention to withhold, reduce, limit, or terminate payment of funds under title VII of the Act and of the opportunity for a hearing.

(d) *Hearing.* If the DSU requests a hearing, the Secretary designates an administrative law judge (ALJ) in the Office of Administrative Law Judges to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The ALJ issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The DSU may seek the Secretary's review of an ALJ's initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews an ALJ's initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The ALJ's initial decision becomes the final decision of the Department in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's final decision to withhold, reduce, limit, or terminate payment of funds to a State under title VII of the Act by filing a petition for review with the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 727(c)-(d) and 796d-1(a))

Subpart C—What Are the State Plan Requirements?

§364.20 What are the general requirements for a State plan?

(a) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, the information required by this part and any other information requested by the Secretary.

(b) *Duration.* (1) The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in State law, organization, policy, or agency operations that affects the administration of the State plan.

(2) The Secretary may require a State to submit an interim State plan for a period of less than three years following a reauthorization of the Act and prior to the effective date of final regulations.

(c) *Joint development-single agency.* The State plan must be jointly—

(1) Developed by the DSU and the SILC; and

(2) Signed by the—

(i) Director of the DSU (Director); and

(ii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(d) *Joint development-separate agency for individuals who are blind.* If a separate State agency is authorized by State law as the sole State agency with authority to administer or supervise the administration of that part of the State plan relating to the vocational rehabilitation of individuals who are blind, the State plan must be jointly—

(1) Developed by the DSU, the SILC, and the separate State agency authorized to provide VR services for individuals who are blind; and

(2) Signed by the—

(i) Director;

(ii) Director of the separate State agency authorized to provide VR services for individuals who are blind; and

(iii) Chairperson of the SILC, acting on behalf of and at the direction of the SILC.

(3) (Cross-reference: See § 364.22(c).)

(e) The State plan must assure that, as appropriate, the DSU and SILC actively consult in the development of the State plan with the Director of the CAP authorized under section 112 of the Act.

(f) *Periodic review and revision.* The State plan must provide for the review and revision of the plan, at least once every three years, to ensure the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a statewide and comprehensive basis, the needs in the State for—

(1) Providing State IL services;

(2) Developing and supporting a statewide network of centers; and

(3) Working relationships between—

(i) Programs providing IL services and supporting or establishing centers; and

(ii) The VR program established under title I of the Act, and other programs providing services for individuals with disabilities.

(g) *Public hearings.* (1) The State plan must assure that the DSU and SILC conduct public meetings to provide all segments of the public, including interested groups, organizations, and individuals, an opportunity to comment on the State plan prior to its submission to the Secretary and on any revisions to the approved State plan. The DSU and SILC may meet the public participation requirement by holding the public meetings before a preliminary draft State plan is prepared or by providing a preliminary draft State plan for comment at the public meetings.

(2) The State plan must assure that the DSU and SILC establish and maintain a written description of procedures for conducting public meetings in accordance with the following requirements:

(i) The DSU and SILC shall provide appropriate and sufficient notice of the public meetings. Appropriate and sufficient notice means notice provided at least 30 days prior to the public meeting through various media available to the general public, such as newspapers and public service announcements, and through specific contacts with appropriate constituency groups and organizations identified by the DSU and SILC.

(ii) The DSU and SILC shall make reasonable accommodation to individuals with disabilities who rely on alternative modes of communication in the conduct of the public meetings, including providing sign language interpreters and audio-loops.

(iii) The DSU and SILC shall provide the notices of the public meetings, any written material provided prior to or at the public meetings, and the approved State plan in accessible formats for individuals who rely on alternative modes of communication.

(h) The State plan must assure that, at the public meetings to develop the State plan, the DSU and SILC identify those provisions in the State plan that are State-imposed requirements. For purposes of this section, a State-imposed requirement includes any State law, regulation, rule, or policy relating to the DSU's administration or operation of IL programs under title VII of the Act, including any rule or policy

implementing any Federal law, regulation, or guideline, that is beyond what would be required to comply with the regulations in 34 CFR parts 364, 365, 366, and 367.

(i) The State plan also must address how the specific requirements in §§ 364.21 through 364.43 and in §§ 364.56 and 364.59 will be met.

(Approved by the Office of Management and Budget under control number 1820-0527)

(Authority: 29 U.S.C. 711(c) and 796c (a) and (m)(6))

§ 364.21 What are the requirements for the Statewide Independent Living Council (SILC)?

(a) *Establishment.* (1) To be eligible to receive assistance under chapter 1 of title VII of the Act, each State shall establish a SILC that meets the requirements of section 705 of the Act.

(2) The SILC may not be established as an entity within a State agency, including the designated State agency or DSU. The SILC shall be independent of the DSU and all other State agencies.

(b) *Appointment and composition*—(1) *Appointment.* Members of the SILC must be appointed by the Governor or the appropriate entity within the State responsible, in accordance with State law, for making appointments.

(2) *Composition.* (i) The SILC must include—

(A) At least one director of a center chosen by the directors of centers within the State; and

(B) As ex officio, nonvoting members, a representative from the DSU and representatives from other State agencies that provide services to individuals with disabilities.

(ii) The SILC may include—

(A) Other representatives from centers;

(B) Parents and legal guardians of individuals with disabilities;

(C) Advocates of and for individuals with disabilities;

(D) Representatives from private businesses;

(E) Representatives from organizations that provide services for individuals with disabilities; and

(F) Other appropriate individuals.

(iii) A majority of the members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and

not employed by any State agency or center.

(c) *Qualifications.* The SILC must be composed of members—

(1) Who provide statewide representation;

(2) Who represent a broad range of individuals with disabilities; and

(3) Who are knowledgeable about centers and IL services.

(d) *Voting members.* A majority of the voting members of the SILC must be individuals with disabilities, as defined in § 364.4(b), and not employed by any State agency or center.

(e) *Chairperson*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the SILC shall select a chairperson from among the voting membership of the SILC.

(2) *Designation by Governor.* In States in which the Governor does not have veto power pursuant to State law, the Governor shall designate a voting member of the SILC to serve as the chairperson of the SILC or shall require the SILC to so designate a voting member.

(f) *Terms of appointment.* Each member of the SILC shall serve for term of three years, except that—

(1) A member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed must be appointed for the remainder of that term;

(2) The terms of service of the members initially appointed must be (as specified by the appointing authority) for the fewer number of years as will provide for the expiration of terms on a staggered basis; and

(3) No member of the SILC may serve for more than two consecutive full terms.

(g) *Duties.* The SILC shall—

(1) Jointly develop and sign (in conjunction with the DSU) the State plan required by section 704 of the Act and § 364.20;

(2) Monitor, review, and evaluate the implementation of the State plan;

(3) Coordinate activities with the State Rehabilitation Advisory Council established under section 105 of the Act and councils that address the needs of specific disability populations and issues under other Federal law;